CASE SUMMARY

Complaint against the Buildings Department for failing to identify an unauthorized structure during an inspection and to offer a written explanation for the issue of a superseding order

The Complaint

The complainant lodged a complaint against the Buildings Department (BD) for -

(a) failure to discover an unauthorized structure during an inspection in June 1997, as a result of which a superseding order was issued to her after she had complied with the first order; and

(b) failure to offer her a written explanation for the supersession of the first order.

Opinions and Conclusion

2. The BD received a complaint in April 1997 that there were unauthorized structures in the complainant's property. Staff of the BD carried out an inspection in June and found that there were unauthorized structures on the roof as well as the landing in the stairhead, obstructing the means of escape. The BD therefore served a removal order on the complainant in October requiring her to demolish the unauthorized structures.

3. The complainant demolished the unauthorized structures after receiving the order. When staff of the BD conducted another inspection in February 1998, they found that the order had been complied with but there was a new unauthorized structure in the stairhead comprising a room with a door. The BD said that this unauthorized structure was not found in the previous inspection. As the unauthorized structure would

affect the means of escape, the staff of the BD advised the complainant on the spot to demolish it.

4. The complainant thought that the BD would issue a letter of compliance and de-register the order with the Land Registry after she had complied with the first order. Instead, she received a superseding order from the BD in April 1998 stating that the first order had been superseded and that she was required to demolish the structure in the stairhead. There was however no mention of the unauthorized structures specified in the first order. Hence, she suspected that the first order might be wrongly issued. Furthermore, she

claimed that there were only a small wooden wall cabinet and a wooden door in the stairhead which were erected prior to the BD's inspection in June 1997. If the BD considered that these structures would affect the means of escape, they should have been included in the first order.

5. The BD stated that a letter of compliance would be issued to discharge an order after it had been complied with. In the present case, as a new unauthorized structure had been identified, the BD issued a superseding order to discharge the order which had been complied with. However, at that time there were no particular guidelines on the issue of superseding orders. As to whether a letter of compliance should be issued to discharge the first order before serving a new order, or a superseding order should be served as in the present case, the BD said both approaches were acceptable. However, if the first approach was adopted, the owner would receive a letter of compliance and a new order. In case of postal delay, the owner might receive the new order before receiving the letter of compliance. Thus misunderstandings might arise. In the circumstances, the BD decided to issue a superseding order stating that the previous order had been superseded, and the unauthorized structures specified in the first order were not included in the superseding order. Furthermore, superseding orders were issued to save administrative work. Upon the issue of the superseding order, the first order would automatically become void and discharged. The staff of the BD had explained to the complainant more than once that what she had to do was to comply with the superseding order. Owing to resource constraints, the BD would not explain in writing why a superseding order was issued except when written inquiries from the owner concerned were received.

6. This Office notes that the complainant has lodged an appeal to the Appeal Tribunal against the superseding order served by the BD. Therefore, we will not investigate or comment on the need to demolish the structure in the stairhead.

7. From the photographs provided by the BD, this Office notes that the back of the small wooden cabinet is seen in a photograph taken during the inspection in June 1997. The location and size of the cabinet are the same as those shown in the photograph supplied to this Office by the complainant. Our investigation officer has also carried out a site visit and found that the location and size of the unauthorized structure

in the stairhead are the same as those of the structure in the photograph taken by the staff of the BD.

Complaint point (a)

8. According to the BD, the room with a door identified in the inspection in February 1998 was not there when the previous inspection was conducted and the room was not the

small wooden wall cabinet referred to by the complainant. However, according to para. 7 above, this Office believes that the cabinet was already there in June 1997. The room is in fact formed by a door, two walls and a low wall together with the cabinet. Under the circumstances, the room referred to by the BD must include the cabinet erected on the low wall. This Office is of the view that the staff of the BD did fail to notice one of the structures, i.e. the cabinet, during the inspection in June 1997. Therefore, The Ombudsman concludes that complaint point (a) is partially substantiated.

Complaint point (b)

9. This Office notes that the BD had no guidelines on the serving of superseding orders. The BD explained that owing to resource constraints, they would not explain in writing why a superseding order was issued except when written inquires from the owner were received. Nevertheless, as far as this case is concerned, we consider that the issue of the superseding order could not serve the purpose of saving administrative work. On the contrary, it had led to unnecessary misunderstanding and extra administrative work as a result of the complaint lodged by the owner. More importantly, the order issued by the BD is a legally binding document. The recipient must comply with the order or else he has to take legal responsibility. As a responsible and efficient department, the BD should ensure that the recipient of the order understands the requirements. It is only reasonable to issue a letter of compliance and de-register the order with the Land Registry after it has been complied with. Therefore, The Ombudsman considers that complaint point (b) is substantiated.

10. All points considered, The Ombudsman concludes that the complaint is **partially substantiated**.

Recommendations

11. The Ombudsman is pleased to note that the BD has conducted a review and decided that a letter of compliance will be issued upon compliance with an order. Should new unauthorized structures be found, a fresh order will be served. Regarding this complaint, The Ombudsman has made the following recommendations for consideration by the Director of Buildings -

(a) to apologize to the complainant for failing to explain in writing why a superseding order was issued; and

(b) to remind his staff from time to time to exercise due care in the inspection of unauthorized structures.

Response from the Director of Buildings

12. The Director of Buildings explains that the superseding order requires the demolition of the room in the stairhead, not only the cabinet which forms part of the enclosing wall of the room. Hence, whether or not the cabinet was already there in June 1997 had no bearing on the BD's decision to demolish the room. Although the BD did not provide a written explanation on the serving of the superseding order, their staff had explained to the complainant more than once which structure had to be demolished. As the complainant still has a misunderstanding about the matter, the BD will make an apology to her. Staff have been and will be reminded from time to time to exercise due care in the inspection of unauthorized structures and in carrying out their duties. Furthermore, when an order has been complied with but at the same time new unauthorized structures are identified, the BD will issue a letter of compliance in respect of the order and inform the owner that they will take action against the new unauthorized structures, so as to forestall any misunderstanding that may arise when the owner receives a new removal order.

Final Remarks

13. In regard to the comments from the BD in para. 12 above, this Office would like to clarify that the partial substantiation of complaint point (a) is based on the fact that the BD's staff failed to notice one of the unauthorized structures, i.e. the small wooden cabinet, during the inspection in June 1997. This has already been expounded in para. 7 above. As to the decision to demolish the room, we have indicated that we will not investigate or comment on the order. The Ombudsman is pleased to note that the BD has accepted the recommendations in para. 11(a) and (b).

Office of The Ombudsman
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